IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 4TH JULY 2007 / 13TH ASHADHA 1929

WP(C).No. 1371 of 2005(L)

AGAINST THE ORDER IN IA.NO.366 /2004 IN OS.134/1999 of MUNI-MAGI.COURT,MANNARKAD

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PETITIONER:

LAKSHMI AMMAL, W/O.LATE NARAYANA SWAMI, RESIDING AT ARASUR, COIMBATORE VILLAGE AND TALUK, REPRESENTED BY HER MUKTHYAR AGENT, S.N.ANGANNAN, S/O.NANJI MUTHUCHETTIYAR, RESIDING AT ANAKKATTI, VEERAPANDY VILLAGE, COIMBATORE TALUK.

BY ADV. SRI.SANTHEEP ANKARATH

RESPONDENTS:

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1. **KRISHNA SWAMY GOUNDER @ MANI, S/O.SANKAYYA GOUNDER, RESIDING AT CHITTUR MOOCHI KADAVU, SHOLAYOOR AMSOM AND DESOM, MANNARKKAD TALUK.**

2. **LAKSHMI, W/O.CHELLAPPA NADAR, RESIDING AT CHITTUR MOOCHI KADAVU, SHOLAYOOR AMSOM AND DESOM, MANNARKKAD TALUK.**

BY ADV. SRI.M.V.HARIDAS MENON for R1 & R2

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.1371/2005 L

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE PLAINT IN O.S.NO.134 OF 1999 OF MUNSIFF-MAGISTRATE COURT MANNARKKAD DTD. 12/08/1999.

EXT.P2: COPY OF THE APPLICATION FOR AMENDMENT DTD. 19/05/2004 WITH THE HAND WRITTEN COPY OF THE ORDER IN THE PETITION, DTD. 15/09/2004.

EXT.P3: COPY OF THE COUNTER FILED BY THE RESPONDENTS DTD. 21/07/2004.

EXT.P4: COPY OF THE ORDER OF THE MUNSIFF-MAGISTRATE, MANNARKKAD IN I.A.366 OF 2004 IN O.S.134 OF 1999, DTD. 15/09/2004.

/TRUE COPY/

KSS

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 1371 of 2005

Dated this the 4th day of July , 2007

JUDGMENT

The order impugned in this writ petition under Article 227 is Ext.P4 order passed by the learned Munsiff dismissing an application for amendment of the plaint. The learned Munsiff himself says in the impugned order that the proposed amendment will not change the nature or character of the suit. The effect of the amendment is that the existing survey number and boundaries of the property will be changed. The learned Judge is of the view that it is for the petitioner to explain as to why it became necessary for the petitioner to seek amendment of the plaint. The law relating to the exercise of powers under Order 6 of Rule 17 of C.P.C. provides that amendments which are necessary for resolving the real contraversies involved in the suit be allowed and that the court need only ensure that the proposed amendment does not result any injustice or cause any prejudice to the adversary. Keeping those principles in mind,

the amendment application should have been allowed by the learned Munsiff, of course after imposing reasonable terms on the petitioner.

2. Considering the stakes involved in the suit, I am of the view that total amount of Rs.2,500/-(Rupees Two Thousand Five Hundred) will be an adequate cost for compensating the defendants and the court for all the inconvenience which would result on account of the amendment. Accordingly, setting aside Ext.P4, I allow the I.A.No.366/2004 on condition that the petitioner pays a total amount of Rs.2,500/- by way of cost. Out of the above amount, Rs.2,000/-(Rs.Two Thousand) will be paid to the respondents either directly or through their counsel in this court or in the court below. Rs.5,00/-(Rs.Five Hundred) will be paid to the High Court Legal Services Committee. Both payments shall be made within a period of one month from today. If payments are not made, Ext.P4 will stand confirmed and writ petition will stand dismissed. Once payment is made and the amendment becomes operative, the court will afford an opportunity to the respondents to file additional written statement. If such additional written statement is filed and if

additional issues arise, such issues will be formulated and the suit will be disposed of in accordance with law.

The writ petition is disposed of as above.

PIUS C. KURIAKOSE,
JUDGE.

dpk